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Court Decision Was No Surprise In Legal Circles

From Staff and Wire Reports

EXETER — The U.S. Supreme Court's rejection of convicted murder Pamela Smart's appeal came as no surprise yesterday to her trial judge at Rockingham County Superior Court.

"There are thousands of appeals to the U.S. Supreme Court, but most are dealt with in the same manner as this one, by denying the writ of certioria," said Judge Douglas Gray.

"I'm satisfied with the trial and the appellant process. If there is any satisfaction to be taken in this sort of thing, I think I did my job well," said Gray, who presided over Smart's trial.

"I think she had competent lawyers at her trial," said Gray, but he had no comment about the work of her attorneys in the appeal process.

Gray said it was usual for the nation's highest court to uphold the decisions of state supreme courts. "I suppose the U.S. Supreme Court ruling is tacitly saying that the New Hampshire Supreme Court is correct," said Gray.

The state's high court had rejected Smart's arguments that the trial judge erred by not granting a change of venue and by not immediately sequestering the jury. Smart's attorneys also said the amount of coverage of the crime in the news media improperly influenced the outcome.

Paul Maggiotto and Diane Nicolosi, the former assistant attorneys general who prosecuted Smart, said they were pleased that the high court had in a sense affirmed the state Supreme Court's findings by saying there was no reason to review the case.

Maggiotto said he felt "there was no violation of her rights to a fair trial."

He said any further appeals would probably be futile. "She could raise federal constitutional claims that have not been addressed already," said Maggiotto, now in private practice. "I don't believe there are any."

He said one argument might be that she was not well-served by her lawyers.

He said she also could appeal if new information surfaced, but he doubts that any will.

Finally, he said, there is always the possibility someone else will come forward and claim to be the killer, or the instigator of the killing.

"I think the chances of that are practically nil," Maggiotto said.

Nicolosi said the rejection of Smart's appeal should end the ordeal for Gregory Smart's family. "It's a good end for the family. There's finally some closure for them," he said.

She also praised Maggiotto's brief in behalf of the state in the case and the New Hampshire Supreme Court's decision in Smart's first appeal.

Attorney James E. Duggan, of the Appelate Defender's Office in Concord, agreed that the Supreme Court's rejection of the appeal was predictable.

"I'm not surprised," he said, explaining that the high court agrees to hear only cases that involve "some novel issue" or an important question that society needs to resolve.

"They don't take a case just because it has had a lot of local publicity" or because the defendant thinks the lower court was wrong, Duggan said. "It's very, very difficult to get a Supreme Court review."

He said Smart's only avenue now would be to file a habeas corpus action at federal district court where she could raise federal constitutional issues, which her attorney has indicated he may do.

Duggan said that would be a long shot. "But it's a possible remedy, and I'm sure they're going to try to exhaust all possible remedies," he said.